

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GERALD TROMBLEY and DEPARTMENT OF THE INTERIOR,  
BUREAU OF INDIAN AFFAIRS, BLACKFEET INDIAN AGENCY,  
Browning, Mont.

*Docket No. 97-2184; Submitted on the Record;  
Issued April 15, 1999*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained disability causally related to his accepted employment injuries of cervical and lumbar sprains.

Appellant, a seasonal firefighter, filed a claim alleging that on April 29, 1996 a tree limb struck him on the head in the performance of duty. On his Form CA-1, notice of traumatic injury, filed on May 6, 1996, appellant alleged a tree fell on his head. He reported the injury occurred on April 30, 1996 and that the injury consisted of neck and low back pain.

The record discloses that appellant was flown from the site of injury by Lifeline Aeromedical Service. Preflight assessment and transport diagnosis was as follows:

“[Five-inch diameter] tree limb fell onto [patient’s] head + L.O.C. Pt. c/o loss of feeling -- numbness to both legs, [complaints] of neck and back pain. Diagnosis: Transport to level one hospital to evaluate compromised spine (cervical and thoracic).”

The record further discloses that appellant was flown to Tuscon Medical Center and admitted the same day. A head computerized tomography scan was requested and interpreted by Dr. Daniel D. Stricof. The impression was “(1) Fluid opacifying portions of the left mastoid. I cannot exclude an occult left basilar skull fracture, although no fracture is seen directly. (2) Superficial brain atrophy, advanced for the patient’s age. No acute intracranial hemorrhage demonstrated.” A magnetic resonance imaging (MRI) scan of the thoracic, cervical and lumbar spine was read by Dr. Steven Strober as revealing “no abnormal cord signal and no evidence of hemorrhage within the spinal canal.” Mild to moderate disc bulging impinging on the left aspect of the cervical cord at C3-4 was noted. Final impression revealed “completion of cervical spine showing degenerative changes without evidence of fracture”; “some straightening in the usual

lumbar lordosis with what is probably mild narrowing at L4-5”; and “negative examination of the thoracic spine.”

A Form CA-16 dated May 1, 1996 discloses that appellant was hospitalized from April 30 through May 1, 1996 with a diagnosis of C3-4 inflammation with findings of disc injury of C3-4 with complaints of some left-sided deficits. Treatment provided was listed as observation and consultation with neurosurgeon. Under remarks, the form noted that appellant was to be followed by neurosurgeon Dr. Thomas B. Scully.

The record contains a report of neurological consultation by Dr. Patrick J. Burns, Board-certified in psychiatry and neurology, dated July 9, 1996. Dr. Burns reported that appellant was seen for a work-related injury; that there was a question as to whether appellant had a loss of consciousness or merely alteration of consciousness. Dr. Burns reported that appellant had a thorough workup at Tuscon Medical Center. He noted the MRI findings of moderate disc bulge impinging on the left aspect of the cervical cord but noted no evidence of cord compression or disc herniation requiring surgical intervention. Dr. Burns reported that subsequent to appellant’s hospitalization, appellant had complained of cervical discomfort as well as discomfort involving the left upper extremity in a diffuse pattern and components of paresthesias of the left 2<sup>nd</sup> and 3<sup>rd</sup> digits. Dr. Burns’ impression was cervical strain, left upper extremity pain, rule out radiculopathy versus shoulder pathology. He recommended a course of physical therapy three times a week for cervical traction, range of motion and soft tissue treatment, and an electromyography of the left upper extremity.

In a report dated July 22, 1996, Dr. Kendall Flint, a Board-certified family practitioner, of Blackfeet Community Hospital reported that appellant suffered from neck and low back pain and left upper extremity numbness and slight weakness stemming from his spine injury of April 30, 1996.

The Office of Workers’ Compensation Programs accepted appellant’s claim in a letter dated September 12, 1996 for cervical and lumbosacral strains.

Appellant subsequently submitted a report by Dr. Ronald M. Peterson, a physician Board-certified in emergency medicine, dated October 4, 1996. Dr. Peterson’s impression was “(1) cerebral concussion; (2) cervical strain; (3) cervical radiculitis; (4) cervical intervertebral disc disorder; (5) bilateral cervical muscle spasms; (6) bilateral rhomboid/lumbosacral muscle tightness; and (7) muscle contraction headaches. He noted that it was imperative that appellant start physical therapy.

The Office in a decision dated November 21, 1996 rejected appellant's claim for compensation stating, "The evidence of file fails to establish that the claimant was disabled for work for the dates of April 29, 1996 to the present."<sup>1</sup>

Appellant requested reconsideration on January 22, 1997 and by decision dated March 11, 1997, the Office denied modification of its prior decision.<sup>2</sup>

An employee seeking benefits under the Act has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of the Act and that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>3</sup>

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination of modification of compensation benefits.<sup>4</sup>

The Board finds that the Office has not identified the medical evidence of record it relied on in terminating benefits to this claimant or the medical evidence it relied on in denying any disability for work exists even though it acknowledged that appellant was air evacuated from the work site and hospitalized with injuries it subsequently accepted.

The record contains medical reports from Dr. Burns in July 1996 recommending physical therapy for three times a week for cervical traction and soft tissue treatments. In July 1996, Dr. Kendall Flint reported appellant continued to suffer from neck and low back pain and left upper extremity numbness and weakness stemming from his spine injury.

Medical reports in the record from Dr. Ronald Peterson, including one dated March 31, 1997 stated:

"When [appellant] was initially seen in our clinic in October 1996, he had been a seasonal worker (firefighter), not working at present time. Although not specifically noted in our clinic records we do not feel that [appellant] is capable of

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<sup>1</sup> The employing establishment in a letter dated October 2, 1996 stated that appellant was not eligible for continuation of pay as he was a seasonal employee. The Federal Employees' Compensation Act, its regulations and the Office's procedure manual all indicate that appellant is entitled to continuation of pay from the employing establishment. 5 U.S.C. §§ 8101-8193, 8118, 8101(1); 20 C.F.R. §§ 10.201, 10.5(11); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Continuation of Pay*, Chapter 2.807.5(f) (July 1993).

<sup>2</sup> Following the Office's March 11, 1997 decision, appellant submitted additional new evidence. As the Office did not consider this evidence in reaching a final decision, the Board may not review it for the first time on appeal. 20 C.F.R. § 501.2(c).

<sup>3</sup> *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

<sup>4</sup> *Betty F. Wade*, 37 ECAB 556 (1986); *Ella M. Gardner*, 36 ECAB 238 (1984).

returning to his job of injury as firefighter, due to recurrent pain and decreased endurance of his neck and shoulder muscles.”

The Board finds that the Office has failed to satisfy its burden of establishing that residuals of appellant’s employment injuries ceased. Thus the decisions of the Office of Workers’ Compensation Programs dated March 11, 1997 and November 21, 1996 are hereby reversed.

Dated, Washington, D.C.  
April 15, 1999

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member